

REMARKS/ARGUMENTS

The present amendment is submitted under the provisions of 37 CFR 1.116 in order to place the case in better form for appeal or in condition for allowance.

1. Claims 1, 3, 4, 5, 7, 8, 10 and 11 have been amended by limiting claim 1 from which the other claims are dependent to the construction of the breathing mask with its seal engaging the face of the patient around the nose and mouth and the forehead support element carrying at least two electrode elements coupled to a signal processing device for processing brain signals, namely, EEG electrodes. In these claims an apparatus has been referred to to avoid confusion with the "device" recited in the body of claim 1.

Claim 12 is already limited to such a system in different terminology. It has been amended to require that the electrodes detect brain-electrical potential. Claims 13-16 have been amended to refer to the arrangement of claim 12 rather than the device, again to avoid confusion with the device recited in the body of the claim.

Claims 17-20 have been amended again to be certain that the breathing mask with the electrodes engageable with the forehead region are specifically recited.

2. The present amendment is enterable under 35 USC 116 because, while independent claims have been limited further in scope, the basis for limitations is to be found in previously examined claims. By narrowing the claims applicants have placed them in better for for appeal or as noted below, in condition for allowance.

3. The claims in the case are allowable over the art which has been cited on various grounds. Claims 17, 18 and 19 have been rejected under 35 USC 102 on KARAKASOGLU. That rejection must fail since KARAKASOGLU does not have a breathing mask as recited in these claims following this amendment.

4. The rejection of claims on KWOK et al in view of KARAKASOGLU must fail since, like KWOK discloses a forehead support for a breathing mask there is not a word as to any electrodes or equivalent on that support. There is not a word in KARAKASOGLU which would suggest that the structures affixed to the face of the patient in KARAKASOGLU could or should be provided on a breathing mask.

There is no suggestion in the one reference of use of its structure in the other or conversely in the other reference of use of that structure in the first. The only nexus is from the instant disclosure and reliance on the instant disclosure is improper under W. L. Gore & Associates, Inc. v. Garlock Inc., 220 USPQ 302 @

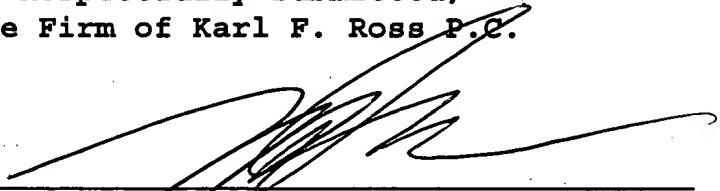
312/313 and Panduit Corp. v. Dennison Mfg. Co. 227 USPQ 337 @ 343/344, reversed on other grounds, 229 USPQ 478, and reasserted at 1 USPQ 2d 1593.

While applicants can agree that the prior art references combined by the Examiner may not teach away from the invention, it is equally clear that there is nothing in either of these references to suggest the desirability of making the combination.

There is no doubt from the art of record, including KWOK and KARAKUSOGLU and WIESMANN et al as taken with LEVIN, that no one has prior to applicants put EEG or equivalent electrodes in a forehead support of a breathing mask to enable brain signals to be determined coupled with breathing. That unique concept affords the new and unobvious results of the invention as described and cannot be achieved with the devices of any of the references in this case.

Hence all of the claims as amended must be allowable and  
an early Notice to that effect is earnestly solicited.

Respectfully submitted,  
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